

§ 31.3306(b)-1T Question and answer relating to the definition of wages in section 3306(b) (Temporary).

The following question and answer relates to the definition of wages in section 3306(b) of the Internal Revenue Code of 1954, as amended by section 531(d)(3) of the Tax Reform Act of 1984 (98 Stat. 885):

Q-1: Are fringe benefits included in the definition of wages under section 3306(b)?

A-1: Yes, unless specifically excluded from the definition of "wages" pursuant to section 3306(b) (1) through (16). For example, a fringe benefit provided to or on behalf of an employee is excluded from the definition of "wages" if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

[T.D. 8004, 50 FR 755, Jan. 7, 1985]

§ 31.3306(b)-2 Reimbursement and other expense allowance amounts.

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62-2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages—(1) Accountable plans—(i) General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfied the requirements of section 62(c) and § 1.62-2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substan-

tiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and § 1.62-2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62-2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made

under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

[T.D. 8324, 55 FR 51697, Dec. 17, 1990]

§ 31.3306(b)(1)-1 \$3,000 limitation.

(a) *In general.* (1) the term “wages” does not include that part of the remuneration paid within any calendar year by an employer to an employee which exceeds the first \$3,000 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3306(b)-1 or §§ 31.3306(b)(2)-1 to 31.3306(b)(8)-1, inclusive), paid within such calendar year by such employer to such employee for employment performed for him at any time after 1938.

(2) The \$3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds \$3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employer B, in 1955, pays employee A \$2,500 on account of \$3,000 due him for employment performed in 1955. In 1956 employer B pays employee A the balance of \$500 due him for employment performed in the prior year (1955), and thereafter in 1956 also pays A \$3,000 for employment performed in 1956. The \$2,500 paid in 1955 is subject to tax in 1955. The balance of \$500 paid in 1956 for employment during 1955 is subject to tax in 1956, as is also the first \$2,500 paid of the \$3,000 for employment during 1956 (this \$500 for 1955 employment added to the first \$2,500 paid for 1956 employment constitutes the maximum wages subject to the tax which could be paid in 1956 by B to A). The final \$500 paid by B to A in 1956 is not included as wages and is not subject to the tax.

(3) If during a calendar year an employee is paid remuneration by more than one employer, the limitation of wages to the first \$3,000 of remuneration paid applies, not to the aggregate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by each employer with respect to employ-

ment performed after 1938. In such case the first \$3,000 paid during the calendar year by each employer constitutes wages and is subject to the tax. In connection with the application of the \$3,000 limitation, see also paragraph (b) of this section relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor. In connection with the annual wage limitation in the case of remuneration after December 31, 1978 from two or more related corporations that compensate an employee through a common paymaster, see § 31.3306(p)-1.

Example 1. During 1955 employer D pays to employee C a salary of \$600 a month for employment performed for D during the first seven months of 1955, or total remuneration of \$4,200. At the end of the fifth month C has been paid \$3,000 by employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The \$600 paid to employee C by employer D in the sixth month, and the like amount paid in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. Employer E pays to C remuneration of \$600 a month in each of the remaining five months of 1955, or total remuneration of \$3,000. The entire \$3,000 paid by E to employee C constitutes wages and is subject to the tax. Thus, the first \$3,000 paid by employer D and the entire \$3,000 paid by employer E constitute wages.

Example 2. During the calendar year 1955 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation, each such corporation being an employer for such year. During such year F is paid a salary of \$3,000 by each Corporation. Each \$3,000 paid to F by each of the corporations, X, Y, and Z (whether or not such corporations are related), constitutes wages and is subject to the tax.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of